TRIAL OF JOHN O'BRIEN,

FOR ALLEGED IMPROPER INTERFERENCE UNDER THE REGISTRY ACT.

Commonwealth, vs. John O'Brien. } Misdemeanor. No. 83. October Sessions. Criminal Sessions of the city and county of Philadelphia.

This was a case of alleged improper interference with the election under the Registry Act.

Mr. John White was called and sworn on the part of the Commonwealth.

On the night of the late election, I saw John O'Brien, the defendant, go to the window of Locust Ward. He tendered his vote—they received it. I challenged the vote on the ground that he did not live in the ward. He gave his name as John O'Brien; he said he lived at the corner of Schuylkill 3d and Walnut. He afterwards said he did not live in the ward—that he lived at the corner of Filbert and Schuylkill 2d street. I asked him how he came to offer a vote at Locust ward. He said that he had been led into it. He said that he never had lived in the ward. We took him to Alderman Hay's office—he was committed.

Cross-examined. Don't know where defendant lives. The name of John O'Brien was on the Registry—but the John O'Brien who lived in the ward, and was on the Registry, had moved out.

John D. Miles sworn. I was standing at the Locust ward window—heard a vote challenged—saw O'Brien standing at the window—I objected to his vote. I said to the defendant, you don't live in Locust ward—he said that he did. He said that he lived at the corner of Schuylkill 3d and Walnut street. I said there were no houses there. He then said that he lived in Schuylkill 3d near Walnut. He afterwards said that he lived in Schuylkill 3d near George street. He then told White that he would show him where he did live. I accompanied him. In Walnut street he admitted that he did not live at Schuylkill 3d and Walnut—said that he had been induced to do it—said that nine months before he had lived in Schuylkill near George street, in a frame house. He said he had voted in South ward one year. He said that he did not know that he was registered, but was told so.

Cross-examined. He was led off the ground. I had hold of his arm. He volunteered to show where he lived. I presume we had no warrant to arrest him—I had none—I did not see him vote. He insisted that he had a right to vote.

Henry McMenamen sworn. On the evening of the election, I stood at the Locust ward window. I saw O'Brien come up and offer his vote. I challenged his vote, and said that he did not live at 12th and Walnut. His vote was taken.

Cross-examined. Did not see any other John O'Brien vote that day.

James G. Cormack sworn. I was standing at the Locust ward window—heard the name of O'Brien called. I saw the defendant, and said that he was not the O'Brien registered. I objected to his vote. I looked in and saw them putting his tickets in the boxes. O'Brien was then arrested. I took hold of him. I knew the John O'Brien who had lived in the ward.

Cross-examined. The John O'Brien whom I knew had moved out of the ward.

Mr. White re-called. The defendant was greatly frightened when he made the statements—he said that he had never lived in the ward.

DEFENCE.

Jos. Randall sworn. I am the Assessor of Locust ward. I made out the list of voters for 1838. I registered John O'Brien. It was not the other John O'Brien, who formerly lived in the ward, that I registered. He had moved away six months before, and I gave his passport to Mr. McCormack.

Cross-examined. When the name of a citizen is handed, together with the requisite proof, I register it. I think Mr. Blandford was the man who reported O'Brien's name to me. His residence was given as corner of Knoodle and Walnut streets—his name was not marked on the Registry with a C., nor was his name challenged at the time appointed by law.

Wm. Blandford sworn. I know where the defendant lives—he lives in Locust ward, between Locust and Spruce, and Schuylkill 2d and 3d sts.; he is the John O'Brien whose name I reported to the Assessor.

Cross-examined. He has moved there since he was arrested on this charge. When I got his papers he lived in 3d street near George street.

SPEECH OF C. J. JACK,

GENTLEMEN OF THE JURY:—

The cause you are empannelled to try, is one of the most important that could possibly fall under your notice in this court. Its elements, its circumstances, its facts, are all calculated to excite you. The result of your late election has but barely been proclaimed from the adjoining room, when you are called on to partially pass upon the merits of it. In opening this case to you on behalf of the com-

monweal h, I endeavored to abstain from all allusion to parties or factions; but in this attempt I was so unfortunate as to drop a suggestion, that the Registry law was unconstitutional. This has been the signal for an attack upon me of a nature as extraordinary as it was unmerited—and I am boldly charged before you with making a town meeting speech! I confess that I was somewhat in doubt as to the forum before which this trial was progressing, when I heard this grave allegation. But I will say the doctrine of the counsel for the defence is not less strange than this attack. Has it come to this—that in a free court, and in a land where all rights are secured by written constitutions—and where liberty may be truly said to hold her high and holy court, that to question the constitutionality of a legislative act, is moral if not legal treason? Under a despotism, indeed, we might be told that there can be no such question raised. But here and every where, as an American citizen, I claim the right—and if proper occasion arise, I shall exercise the privilege of not only examining any legislative act,but also of pronouncing my opinion, whether it be constitutional or not. To yield this right, would be to invest the Legislature with a power superior to the laws, the constitution, and the people. Human Legislation, like all other works of humanity, is imperfect and frail. It can have no strength from the mere source from which it emanates. Its foundations,to be strong and durable, must be laid in justice, equality and truth. These support the great pillars of the law, and without them the temple of justice would fall into ruin. It was not my intention to have investigated at this time the constitutionality of the law, under one of the sections of which the defendant is indicted. Indeed had I drawn up the legal charge against him, I should have preferred one at common law,and not under this statute; but the Attorney General of the State has done what he considered his duty, in the direction which he has given it, and I am content to try this issue before you. As, however, the mere utterance of an opinion has produced such a result, I mean with all respect to the court, to briefly examine the constitutionality of the law, so far as regards that corner stone of our republican institutions—the right of suffrage. I maintain therefore that the general scope and tendency of the Registry Act is unconstitutional—and that as a means of fraud to the evil inclined, it is the most perfect scheme that the wit of man ever invented. That instead of introducing checks and safeguards to the constitutional rights of the citizens, it has thrown them all down—and at this moment rendered that heretofore most potent organ of the people's will, below contempt. The right of suffrage is no longer what it was. The Registry Act, like death upon the pale horse, scatters destruction wherever it goes. No man believes in any thing but the Registry. The right of suffrage, the ballot boxes, the tally lists, the returns—all, all, bow to their superior—the Registry. But my present purpose is to expose its most prominent unconstitutional provisions—contending, nevertheless, as I shall, that part of this act is constitutional, and particularly, this section under which the commonwealth claims the conviction of the defendant. Wherever this law does not expressly violate the rights of the citizens under the constitution, it is a law that may, nay ought to be enforced. The section under which this defendant is charged is one of this class. It can well stand alone, if all the other sections were to fall, as its provisions are general and conservative of our constitutional rights—for it provides for the punishment of offences, which, if prevalent, were calculated to molest and destroy such rights. Thus it declares and enumerates five distinct crimes—first, any improper interference at any election; second, preventing or attempting to prevent any judge or inspector from holding an election; third, blocking up or attempting to block up the window or avenue to any window, where an election is held; fourth, improperly interfering with the judges or inspectors; fifth, riotously disturbing the peace at an election—a l these are direct infringements upon the rights of the citizens—and are a public wrong that may be indicted and punished at common law, without the aid of this statute. I maintain therefore that being merely declaratory of the common law and in perfect accordance with the constitution, that this section is the law of the land imperative upon us all. Again,I would remark, that I am greatly misunderstood and unappreciated, when I am represented as one opposed to law and order. I am far otherwise—I am the friend, the true, the steady friend of both; party nor men of any kind ever swerved me from the true land mark of the law. But I am nevertheless the uncompromising enemy of every thing, whether under legal form or not, that would sap the great foundations of which I have already spoken. I oppose wrong in every shape, whilst I as firmly uphold right. Let us see, wherein this law contravenes the constitution. The present constitution declares the qualification of voting at elections thus: in Article III. Section 1. "In elections by the citizens, every freeman of the age of twenty-one years, having residence in the State two year snext before the election, and within that time paid a State or county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector: Provided, that the sons of freemen qualified as aforesaid between the ages of twenty-one and twenty-two years, be entitled to vote, although they shall not have paid taxes." Now these qualifications are simple and well known to all the community. They are—1. Twenty-one years of age. 2. Two years resided in the State before the election. 3. The payment of a State or County tax assessed six months before the election. 4. If no tax has been paid, and you are between twenty-one and two, that you are the son of a qualified voter—possessing these qualifications, the constitution says YOU SHALL ENJOY THE RIGHT OF AN ELECTOR! Now what does the Registry Act provide: First, that you shall on or before the Fifth day of September in every year, be alphabetically arranged as an inhabitant of a ward, township or district, as as a qualified voter, subject to

certain contingencies, by the assessor of the said ward, township or district.

Second—That you shall examine said alphabetical list to see if you are placed thereon, and if not, that you shall take such steps as are enumerated in said law to be placed thereon.

Thirdly—That you shall be disqualified, if upon the day of election, your name is not upon the Registry.

All these matters are made imperative upon any elector in the city of Philadelphia and adjoining districts, in addition to his other duties, before he can enjoy under the Registry law the right of an elector! How can it be said that this does not conflict with the constitution—does it not affix an additional qualification to those required by the constitution? If you doubt it, go to an election poll—present your vote—you have been assessed—you are a citizen—you have paid your tax—but you are not registered. Your vote is not counted because you lack this superadded qualification. Here then, I maintain, in the case of an individual citizen, there is a direct and open conflict between this law and the constitution—the latter declaring if you possess the qualifications it designates, you shall enjoy the right of an elector, and the Registry law declaring that you shall not But it does not stop here. It overleaps the Constitution, for it declares that such Registry "shall be deemed and taken to be conclusive evidence of the qualifications of the of the electors." So that all other qualifications sink into nothing before the qualification of the Registry. In another point of view, this act is unconstitutional, as it puts the right of suffrage directly in jeopardy, when the constitution meant that it never should be; thus, it is in the power of the Assessor, Judges and Inspectors to place you upon the Registry or not, as they may think proper. It is argued, however, that you have your remedy, that you can indict them if their conduct is criminal, or have your civil remedy against them for damages. But the defectiveness of this law is most apparent in this particular, in not distinctly describing such an offence by the Assessor, Judge or Inspector, and fixing their punishment. But the great and serious objection to the law is, that it puts the elector to great inconvenience, trouble and expense to obtain legal satisfaction for this outrage upon his rights.—This, however, is not the only conflict between it and the constitution, as it requires that the Judges and Inspectors shall, before the day of the election, be sworn or affirmed to perform their duties with fidelity, and to make up that list or registry which, upon the day of the election, binds their consciences as the only and conclusive proof of the qualifications of the electors—even when they have the most ample and conclusive proof that citizens, not upon that registry, are entitled to enjoy the right of electors under the Constitution they are sworn or affirmed to maintain! The imposition of these duties upon the citizens and upon the Judges and Inspectors, is in direct opposition and contradiction to the constitution. In framing the constitution, our ancestors were careful to put therein as the fundamental law, what was necessary to secure the right of suffrage. They never meant or intended that any Legislature should affix any other qualifications than those so plainly laid down—and if the Legislature posses the power to alter, add, or diminish this right, there is no limit to their power, they may make what qualifications they please or dispense with all. The constitution recognizes no such power in the Legislature, and any exercise of it is unconstitutional. But it has been urged, and may be again, that this act and similar laws are only designed to carry out the constitutional requirement. To this I reply, if they affix none other than constitutional qualifications, there can be nothing unconstitutional in them. We all know that fundamental laws are brief and comprehensive, and that they require legislative enactment to perfect their operation. All election laws, therefore, that regulate elections, must simply be confined to this duty—to go farther is to range beyond constitutional limits. If the Legislature can, by such enactments, turn the constitution into a dead letter, it may be without restraint. The right of suffrage in the constitution is clear, precise and well defined. There can be no doubt or mistake as to the qualifications which entitle a citizen to enjoy it. By this act, every thing is confused, unintelligible and unsatisfactory. It has been urged that the Legislature has not violated the constitution in requiring that the citizen shall, before the day of the election, prove his qualification to the Assessors, Judges and Inspectors, but this is mere sophistry. There can be no legal or constitutional call upon the citizen to exhibit his qualification to vote except when he is about to exercise the right of an elector, nor can any legal authority be given by the Legislature to any man or set of men to ascertain who are entitled to vote before the election, because all such exercises of power are restrictive of the constitutional right of the citizen, and therefore void, as they do not further the right, but only prohibit its exercise. The constitution says that "elections shall be free and equal." This Registry conflicts materially with both these important principles. The elections under the registry are free only for the registered; they are a sealed book to the citizens not placed upon it. Again: The Registry directly opposes the cardinal principle of equality in placing the city and districts upon a different ground from those of the state at large. This act is therefore unconstitutional in this view.

Thus, gentlemen, I have redeemed my promise, although from the character of the issue, I would have been more pleased to have had greater time for preparation for it than this off hand sort of investigation which I am compelled to give. Still I am satisfied that this law in those points is unconstitutional. Great horror seems to fill the minds of some at the idea of a Judge or Jury deciding that a law is unconstitutional. It becomes, therefore, necessary for me to say something on this point to remove such gross misapprehension of the duties of the Judiciary. The constitution is the supreme law. The very organisation of the Judiciary is in the nature of a shield to the people from the usurpations of the Legislature. The Judges are to be

learned in the law for the benefit of the people,that They may have the ability to decide upon all proper cases that arise, involving the rights of citizens. To be tenacious and morbidly sensitive in exercising this important duty is, to my mind, a great error—one, indeed, that has been most justly censured by the people in the late election. Many act as if the Legislature were supreme; altogether overlooking the constitution as the paramount power. The Legislature is, in fact, but the creature of the constitution. The Judiciary are the expounders of the constitution. To them is confided in the first instance the power, the right and the duty so to do. they are bound in all cases to declare a law constitutional or otherwise whenever it is properly presented to them. This is one of the means of safety to the people, rights secured by the constitution. But there is yet another constitutional shield, and that is, the right of the Jury in all criminal cases to judge of the law and the facts. Junius in his day contended with the most brilliant success for this right. He says, in his address to the English nation, "That the right of Juries to return a general verdict in all cases whatsoever, is an essential part of our constitution, not to be controlled or limited by the Judges." The trial by jury is thus a protection against corrupt or tyrannical legislation, and likewise against time-serving or dependent judges. No man is more strongly in favor of an independent Judiciary than I am, but I do not mean that kind of independence that elevates the Bench beyond the control of the constitution and the just influence of the people. The independence I am in favor of is that which, looking neither to the right nor to the left, decides with calmness, decision and intelligence every case that arises properly before it, abiding with confidence in its integrity, justice and constitutionality, and seeking only the just applause that follows such a performance of duty.—Any other independence would be to erect an arbitrary power in the Judiciary, repugnant to every republican principle and destructive of every political right—and, I thank God, none such exists in this my native state. No, there is no arbitrary power in this country. All is limited, restricted and defined. Any hesitation, therefore, upon the part of a Jury to decide upon the constitutionality of a law in any case where the rights of the people are involved by it, is a base and unmanly surrender of this most important right, and should be visited with the indignation which should arise in all men's bosoms, who value the republican institutions of their country. And in important cases I shall never fail to claim its exercise; whenever from the nature of them, I may conceive it my duty to excite the right vigilance of jurymen; nor do I think that by so doing I am in any degree impairing the respect which is due to the judiciary. The right exercise of a constitutional duty can never be tortured into a disrespect for the highest legal functionaries. From these views let us turn to the case now before you. The defendant is arraigned on the charge of improperly interfering in the election at Locust Ward—what are the facts? It appears that after the Assessor had gone round his round, and made out his list, that an individual in the employ of the city as a watchman, called on the Assessor, and exhibited to him two papers, and desired him to register the defendant as an inhabitant of the ward—the said John O'Brien intending to occupy an empty house at the corner of Noodle and Walnut street. That the Assessor did insert his name upon the list—although not then an inhabitant of said ward—that on the day of the general election, the said John O'Brien did present himself at the window before the Inspectors of Locust ward, and claimed a right to vote—that his vote was then challenged by several persons, but the Inspectors received his vote notwithstanding, and placed his tickets in the box—a number of citizens of the ward being present, acquainted with a certain John O'Brien who had lived in the ward, immediately interrogated this man from whence he came. He still persisted in his right to vote from living in the ward, and offering to show them where. They went with him—he had not gone far, before he told them different places as his place of residence, and finally closed the scene by declaring voluntarily that in God's truth he did not live in the ward, nor never had, but then lived in South ward, and that he had been put up to it by others—these are the substantial facts as proved before you. The question then is, was the procuring surreptitiously his name to be placed on the Registry, and voting in a ward wherein he did not live, and of which he was not an inhabitant, such an interference as the law meant to punish as an offence? In order to understand this, let us see what is the honest force of this Registry act? If it have any, its design is to confine the electors to the several wards of which they are inhabitants. There can be no greater interference than this practised by this man—as in principle it goes to the entire defeat of the law and the right of suffrage under it. If individuals like this, generally known by the cant term of *grand-rounds men*, can get their names by a fraud put on the registry, and thus possess the right of voting in every ward, This law is a farce; its provisions a sheer humbug. To my mind, we should give it an honest construction, and not say that it is to befriend and advance the rogue, but to defeat the honest elector. This interference, therefore, should be held as the most criminal of all, because it operates like poison, in secret, to defeat the ends and aim of the right of suffrage and this law. Every unauthorised intermeddling with the election, by persons who are disqualified from voting, either by putting in fraudulent votes, interrupting the passage of voters to the polls, insulting the Judges or Inspectors, or creating a riot and breach of the peace, is a clear illegal interference or interruption of the election, and punishable under this section. The offence of the defendant is most clear and should be found so by your verdict. Something has been said of the power of the citizens to arrest individuals offending against law, at elections. I will give you my views: Every citizen has a right in all cases to make an arrest for any offence upon his own responsibility without a warrant. If the person so arrested has

really been guilty of an offence, the citizen who made the arrest stands discharged from all liability. If, however, the arrested party be not guilty, the citizen must bear the responsibility, it being more or less according to the circumstances of the case. In the case of offending at elections, I do not advise the arrest of any one withost strong probability of their being guilty; nor even then, unless it be unavoidable, to secure the party offending, because at an election the temper of most men is excited, and an attempt to arrest, those present being generally divided into parties, might be productive of riot and bloodshed, the bane of the right of suffrage and popular government. But if an individual is guilty, and if, as in this case, he be not known, it is the right, nay, it is the duty of all citizens present, to arrest with or without warrant, as they may be provided, the offender on the spot, and carry him to a Justice. Without this power you could not shield the ballot box nor guard the right of suffrage, if offenders were permitted to escape, as would be generally the case if an immediate arrest was not made. Having thus expressed my views upon the several points that have arisen in this cause, I cannot close without urging you to seriously consider the importance of your verdict. If you would render the honest provisions of this law operative—if you would make your elections peaceful and confident—if you would discountenance fraud and punish offenders against the corner stone of your republican edifice, the inestimable right of suffrage, and vindicate the law from the approach of party, whose touch is defilement and whose contact death—you must record your verdict in favor of the Commonwealth, and thus add another evidence to the value of the trial by Jury.

CHARGE OF JUDGE CONRAD.

Commonwealth, vs. O'Brien.

This is a prosecution for a violation of the law by an improper interference at the Locust Ward window, on the day of the general election. It is the first case of the kind that has been brought before this court, and I believe the first prosecution under the act of 1836. I am rejoiced to see a disposition manifested to bring to justice those guilty of the offence here charged. The citizens, who, in good spirit and from just motives, prosecute election frauds, are entitled to the gratitude of the community.

The indictment alleges that John O'Brien, with force and arms, did improperly interfere in an election held in the county of Philadelphia, under the provisions of an act of the General Assembly of the said Commonwealth, entitled an act regulating election districts, and for other purposes, passed the 16th day of June, 1836, to the evil example of all others, &c.

It is objected by the counsel for the defendant, that this is not a sufficient description of the offence. The words of the act are strictly followed in the bill, generally the safest course in the description of an offence against the statute; but the designation of the offence in the act appears to be a general one, and I am disposed to believe that in this case, as in others, all the facts and circumstances constituting the offence should be specifically set forth. The point, however, has been reserved for future argument; and the defendant will, if necessary, have all the advantage of it hereafter. For the present, the Jury will consider the indictment sufficient.

A question has been raised as to the constitutionality of the act of Assembly under which this prosecution is brought; and it has been urged that the jury is the proper tribunal for the decision of that question.

It is the province of the Jury to determine the facts and the law under the direction of the court. The time was when, in the country from which we derive our legal system, the judges not only often invaded the peculiar province of the Jury by deciding matters of fact, but abused their own power in the construction and administration of the law. Instructed by these examples, the framers of our government wisely secured to the Jury the privilege of determining the law as well as the facts in criminal cases—a power which, in case of judicial corruption or oppression, is invaluable for the protection of the people. If the Jury believe that the time has arrived when it is necessary to interpose that shield—if they believe that they are better qualified to expound the laws than the judges selected for that duty—if they have determined that the Judiciary is an idle and unnecessary institution, the jury being all sufficient—then they will of course construe the law for themselves, or if they think proper, reject it wholly as unconstitutional. In doing so, however, they would assume a serious responsibility—for though the Jury may determine the law for themselves, they cannot *make the law for themselves*—they cannot err without danger, nor brush away the legal landmarks of the country without guilt.

This court is of opinion that the act referred to *is constitutional;* and if we had doubts on the subject, we would, in accordance with the rule laid down by the Supreme Court in Republic v. Duquet, 2 Yeates 493, and subsequently re-affirmed, reflect long and anxiously before we ventured to veto an act of the Legislature. "It must be a very clear and unequivocal case, to induce the Court to pronounce an act of the Legislature unconstitutional." The present is certainly not such a case. The Constitution fixes the qualifications of electors, leaving it to the Legislature to direct in what manner those qualifications are to be ascertained. The law of 1799 fixed one mode; the law of 1838 fixes another mode. They are equally constitutional. There is scarcely a right secured by our constitution, which is not exercised under laws enacted to ascertain and regulate it. The constitution secures to each man the right of "acquiring, possessing and protecting" property; the law designates the evidence which establishes the right, and then regulates its enjoyment. The right of suffrage is also subject to doubt, and the law must, in like manner, designate the evidence by which it is ascertained; that right or its exercise may be surrounded by difficulties—the law must sustain it; it may be exposed to danger—the law must protect

it. The Legislature must erect the tribunal which determines the question of qualification; it must direct *how* that qualification must be proved, *when* it must be proved, *where* it must be proved, and what proof is final and conclusive. When the right is thus ascertained, the law must designate when and how it shall be exercised. Without such laws, our elections could not be held. These laws may, and indeed from the nature of things, must be, more or less defective; but so also are the laws upon which the enjoyment of every other constitutional right depends. Is it pretended that they are in consequence unconstitutional? It is unnecessary to say that if a Legislature were so bold and so abandoned as to pass a law which, under the pretext of ascertaining the qualifications of electors, would in fact strip the people of the right of suffrage, or hedge it round with unnecessary obstructions that would prevent, and be designed to prevent its free exercise, (a supposition most improbable, and which involves a total loss of confidence in popular institutions) such a law would not be enforced by an honest court, nor endured by a free people. It will not be pretended that the law before us is of that character. In requiring the voter, previous to the election, to produce and fix on record the evidence of his right, it secures, guards and protects, instead of diminishing or hampering his privileges. The process may be inconvenient to individuals—so, to a certain extent, was the method under the previous law—but the Legislature deemed it a public advantage, and had the power to enact it. If the Legislature has a right to pass any law on this subject, it had a right to pass this law; if it has a right to provide for any mode of ascertaining the qualifiation of voters, it had a right to provide this mode.

If, however, the Jury think otherwise, they will acquit the defendant. One part of an act may be unconstitutional, and another part of the same act, but wholly disconnected from it, may be constitutional; but such is not the fact in the present case. The election at which the alleged fraud was committed was held under the provisions said to be unconstitutional; the section upon which this prosecution is based is connected directly with those provisions; the indictment is framed under and refers to them. They must all stand or fall together.

I am somewhat surprised that the prosecution should have considered it necessary in this case to pronounce the very law under which it asks the conviction of the defendant, to be unconstitutional, and still more astonished that he should have denounced it as oppressive and unjust. Such is not usually the course of the Commonwealth. The Court House is the home of the law, the place where it should be sustained and honored, not held forth to contempt and infraction. The business of legislation is done elsewhere; and appeals to popular feeling against the law of the land should not, in propriety, be made in the temple of justice.

The following is the section under which this indictment has been framed: "If any person shall improperly interfere in any election held under the provisions of this act, in the city and county of Philadelphia, or shall prevent or attempt to prevent the Judges or Inspectors of any ward, district or township, from holding an election for the same, or shall block up or attempt to block up the window, or avenue to any window where the same may be holden, or shall improperly interfere with the Judges and Inspectors in conducting the same, or shall riotously disturb the peace at an election, on conviction thereof he shall be," &c.

It is for "*improper interference*" that the defendant is arraigned at the bar of this Court. What interference is "improper?" The word is not to be taken in its popular sense, nor is all to be regarded as illegal which individuals might think improper. The interference which incurs the penalty of this section must be such an one as violates some distinct law. If he interfered by doing that which was, and would have been, without the passage of this section, unlawful, then and only then he is guilty of what is here called "*improper interference.*"

It is alleged on the part of the Commonwealth, that this defendant, not being entitled to a vote in Locust Ward, wilfully voted at the Locust Ward window. If this statement be correct, the defendant must be convicted.

It is urged that his non-residence in that ward is established by his own confession. If his admissions were made under intimidation or under terror they should not be received. Such is the rule of *law;* if, in this case, such be the *fact*, the admission of the defendant must be rejected. But if voluntary, it is strong evidence against him.

It is proper that I should state that there is no authority to arrest without warrant for election frauds unaccompanied by an actual breach of the peace; and those who thus take the law into their own hands make themselves answerable to the criminal laws, and in damages to the person arrested. The circumstances in this case, however, should not be allowed to excite a prejudice against the prosecution or the witnesses who sustain it. Their character is unimpeached, and no doubt unimpeachable; and their testimony should receive respectful and careful attention.

The questions which must be determined by the Jury are—1st. Had this defendant no right to vote? 2d. Did he vote, intending to commit a fraud?

In order to understand whether he had a right to vote in Locust Ward, we must ascertain what is the evidence of such a right. Before the passage of the act generally called the Registry Law, the evidence was various and difficult, and was all produced, canvassed and determined on the election day, at the election ground. To avoid the confusion, inconvenience and excitement thus occasioned, the present law was enacted. It provides for a previous examination of that evidence and a settlement of the question of right to vote. That settlement is final, and when the name is placed on the Registry list, that list is made conclusive evidence of a right to vote. There is one exception, in the case where the voter is previously challenged and the letter C is marked to his name. But the regis-

try of the name, without this letter, is not only the best and highest evidence of a right to vote, but, in the words of the law, is the only and conclusive evidence.

But, it may be asked, may an illegal voter have his name fraudulently placed on the Registry List, and then triumph in his guilt unpunished? I answer *no*. The change of the law does little more than ante-date the time for examining and determining the evidence of qualification. The process still takes place under the eye, and if wrong be done, under the penalties, of the law. If the Assessor, the Judge, Inspector or Clerk be guilty of fraud in making up the Registry, they are amenable to this Court. If the voter use simulated papers, he is guilty of forgery. If he swear falsely, he is guilty of perjury. If, generally, he does that which merits the penalties of the outraged law, he will find that it is not without power to punish. If, then, John O'Brien was guilty of wilful fraud in procuring his name to be placed on the Registry, he is not, even if acquitted on this bill, beyond the reach of the law. But these are foreign issues. It is not our province to determine whether this law be defective or otherwise, but to say what is, under the law, evidence of a right to vote, and whether the defendant had that evidence. The law declares that the Registry List shall be "deemed and taken to be the only and conclusive evidence of the qualifications of the electors." This cannot be misunderstood. If, then, John O'Brien was registered and unchallenged, and if this defendant is the identical John O'Brien so registered, he was entitled to vote, and in voting did not commit any violation of the law.

Here, perhaps, I might close; but leaving the facts wholly with the Jury, I will not assume any thing as proven, but proceed to the second question. If he had no right to vote, did he vote intending to commit a fraud? If, intending to do a lawful act, he did an unlawful one—if, being entitled, he believed the Locust Ward window the one at which he should vote, when it was not—if, in short, he did not intend to commit a fraud, he is not guilty. If wilfully and knowingly he did vote, not having a right to do so, he is guilty. The truth must be gathered from the circumstances.

I have not adverted and will not advert to the facts of the case. It is your province to decide them: and I am sure that they may be safely left with the intelligence, independence and rectitude of this Jury.

It is proper that I should commend the whole case to the earnest and even solemn consideration of the Jury. The charge is, in a moral and social point of view, one of the most serious that can be alleged against a citizen. You have, in the course of this session, been repeatedly required to vindicate by your verdicts the right of property and the right of personal security; you have now reposed in your hands that *parent right*—the privilege of suffrage, which protects and sustains all other rights. Not only is the right of suffrage the corner stone of our political structure, but the safeguard of social tranquillity; and the frauds which are so frequently committed not only undermine our institutions, but loosen the bonds of social union, sap the confidence of the people in themselves and each other, and prompt to the last and worst remedy for the vindication of rights—*a resort to force*. Whenever a defendant charged with these offences shall, after a fair trial, be pronounced guilty by a Jury of his country, this Court will go as far as the law goes in punishing the offender.

One word more, gentlemen of the Jury, and I will commend you to your duty. I have in the course of this case, heard, not without regret and disgust, frequent reference to politics and parties. These are words which should not be heard in a Court House. In the corruption and debasement of modern politics, there should be at least one spot, undefiled by its depravity and undisturbed by its madness. Politics may convulse and deform all else; but if our Court houses are safe, our people are safe. As jurors, your duties are stern and exalted—I am sure that your principles and purposes are equally so. No prejudice can, I am assured, penetrate within the sacred precincts of the jury-box. To suspect or fear such an influence would be to wrong you, not only as American jurors, but as good patriots, good citizens and good men. The juror who listens to the promptings of political prejudice, stands upon his violated and trampled oath, and cannot afterwards regard himself as a faithful citizen or an honest man.

The counsel has referred to the recent change of our Constitution as placing all officers under popular control. I know one officer at least, who, while he has the honor to occupy his present station, will make it his anxious object, in the performance of his duties, to isolate himself from all influence, and to spurn all control, save that of truth, law and justice. The popular will is, and should be, all powerful elsewhere: here the law alone reigns, absolute and supreme; and he who is connected with the administration of the law, whether as juror or Judge, who can yield to external influences, whatever their source or character, as unfaithful to the high trust reposed in him, to his country, and to himself.

The Jury retired, and after some time, returned into Court and rendered a verdict of *Not Guilty*.

C. J. Jack, Esq. for Commonwealth; M. Sprogell and D. S. Todd, Esqs. for defendant.